

December 4, 2007

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2007-24 is available for public comments under this procedure. It was requested by Jim Burke and Jeff Walz.

Draft Advisory Opinion 2007-24 is scheduled to be on the Commission's agenda for its public meeting of Thursday, December 6, 2007.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00pm noon (Eastern Time) on December 5, 2007.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2007-24, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at www.fec.gov.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

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December 4, 2007

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*
General Counsel

Rosemary C. Smith *RC*
Associate General Counsel

Amy L. Rothstein *AR*
Assistant General Counsel

Stacey J. Shin *SJS*
Attorney

Subject: Draft AO 2007-24

AGENDA ITEM
For Meeting of: 12-06-07

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 6, 2007.

Attachment

1 ADVISORY OPINION 2007-24

2
3 Mr. Jim Burkee
4 Mr. Jeff Walz
5 W 66 N491 Madison Avenue
6 Cedarburg, WI 53012-2350
7

DRAFT

8 Dear Mr. Burkee and Mr. Walz:

9 We are responding to your advisory opinion request concerning the application of
10 the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission
11 regulations to certain joint campaign and fundraising efforts by Jim Burkee for Congress
12 (the "Burkee Committee") and Jeff Walz for Congress (the "Walz Committee").

13 The Commission concludes that the Burkee Committee and the Walz Committee
14 may engage in joint campaign and fundraising activities as proposed. The two
15 committees may allocate joint campaign and fundraising expenses as described below.
16 Finally, the Commission concludes that the various methods of paying joint campaign
17 and fundraising expenses proposed in the request are permissible under the Act and
18 Commission regulations, subject to certain limitations discussed below.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 October 15, 2007.

22 Jim Burkee and Jeff Walz are Republican and Democratic candidates,
23 respectively, for the Fifth Congressional District of Wisconsin of the U.S. House of

1 Representatives.¹ The candidates plan to campaign together, wherever possible, to
2 promote a campaign “marked by civility and honesty.”

3 With regard to fundraising, the candidates’ presumptive principal campaign
4 committees, the Burkee Committee and the Walz Committee, intend to form a joint
5 fundraising committee (the “Joint Committee”).² The Joint Committee would serve as a
6 “clearinghouse” for contributions, and all contributions to the Joint Committee would be
7 divided evenly between the Burkee Committee and the Walz Committee. In addition,
8 individuals would be informed in advance that they may contribute to only one of the
9 candidates.

10 Mr. Burkee and Mr. Walz plan to enter into an agreement that identifies the Joint
11 Committee as their joint fundraising representative. They also plan to file statements of
12 organization for the Joint Committee, as well as the Burkee Committee and the Walz
13 Committee, with the Commission.

14 Mr. Burkee and Mr. Walz plan to appear together at campaign events, wherever
15 possible. Such joint appearances would include events hosted by third party
16 organizations (such as churches, Rotary clubs, Chambers of Commerce, schools, and
17 universities) and joint political rallies. Mr. Burkee and Mr. Walz would solicit
18 contributions at some or all of these events. In addition, they intend to appear jointly in
19 television and radio advertisements, as well as in “web-based” and e-mail advertisements.
20 They also plan to promote their campaigns through a website, yard signs, bumper
21 stickers, and other print advertising and materials, featuring both candidates with equal

¹ As of the date of issuance of this advisory opinion, only Mr. Burkee has qualified as a “candidate” under 2 U.S.C. 431(2) and 11 CFR 100.3 and filed a statement of candidacy under 11 CFR 101.1(a).

² As of the date of issuance of this advisory opinion, only the Burkee Committee has filed its statement of organization with the Commission.

1 time and prominence. In addition, Mr. Burkee and Mr. Walz intend to solicit
2 contributions through some or all of these promotional media. Furthermore, they may
3 also engage in joint mailings and participate in other joint fundraising events.

4 The Burkee Committee and the Walz Committee intend to split the cost of the
5 joint campaign and fundraising activities equally, including personnel costs. The
6 committees would share the cost of other expenses, including: website development,
7 purchase of domain names, hosting service, and server space; development and
8 implementation of joint advertising, such as television, radio and newspaper
9 advertisements; bumper stickers, campaign banners, and yard signs; and office
10 equipment. All campaigning and fundraising activities conducted solely by or on behalf
11 of one candidate would continue to be funded only by that candidate.

12 The candidates plan to pay expenses for these and other joint activities in three
13 ways. First, one campaign committee would pay the full cost of goods or services and be
14 reimbursed 50% by the other campaign committee. Second, a candidate or staff member
15 would purchase goods or services and be reimbursed at 50% by each campaign
16 committee. Finally, vendors that provide goods or services would invoice each campaign
17 committee separately at 50% of the total cost.

18 ***Questions Presented***

19 *1. May the Burkee Committee and the Walz Committee raise funds together under the*
20 *Act and Commission regulations?*

21
22 *2. How must the Burkee Committee and the Walz Committee allocate the expenses*
23 *associated with the joint campaign and fundraising activities?*

24
25 *3. May the Burkee Committee and the Walz Committee pay for the joint campaign and*
26 *fundraising activities as described in the request?*
27

Legal Analysis and Conclusions

Question 1. May the Burkee Committee and the Walz Committee raise funds together under the Act and Commission regulations?

Yes, the Burkee Committee and the Walz Committee may raise funds together, as proposed.

Commission regulations set forth guidelines for joint fundraising by political committees other than separate segregated funds. *See* 11 CFR 102.17. These regulations allow a political committee to “engage in joint fundraising with other political committees or with unregistered committees or organizations.” 11 CFR 102.17(a)(1)(i).

The participants in a joint fundraising effort must either establish a separate political committee³ or select a participating committee to serve as their joint fundraising representative. *See* 11 CFR 102.17(a)(1)(i). The joint fundraising representative must be a reporting political committee and must also be an authorized committee of each participant who is a candidate for Federal office. *Id.* If the participants establish a separate political committee to act as the fundraising representative, that committee must “collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant.”

11 CFR 102.17(b)(1). Commission regulations also require the participants or the fundraising representative to establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. *See* 11 CFR 102.17(c)(3).

³ If the participants establish a separate political committee to serve as their fundraising representative, that committee must not participate in any other joint fundraising effort. It may, however, conduct more than one joint fundraising effort for the participants. *See* 11 CFR 102.17(a)(1)(i).

1 Joint fundraising participants must also enter into a written agreement, identifying
2 the fundraising representative and stating a formula for the allocation of fundraising
3 proceeds. *See* 11 CFR 102.17(c)(1). Commission regulations require the fundraising
4 representative to retain the written agreement for three years and make it available to the
5 Commission upon request. *Id.*

6 Here, Mr. Burkee's and Mr. Walz's proposal meets the requirements set forth in
7 Commission regulations for establishing a lawful joint fundraising effort. The fact that
8 Mr. Burkee and Mr. Walz belong to different political parties does not change the
9 analysis under Commission regulations.⁴

10 First, they plan to create and register a new political committee to serve as their
11 joint fundraising representative. Second, they intend to enter into a written agreement,
12 naming the new political committee as their joint fundraising representative. Finally,
13 they have established a formula of 50%/50% for allocating the joint fundraising proceeds.
14 The Joint Committee would serve as a "clearinghouse" for contributions to the two
15 campaigns, and divide the contributions evenly among, and disburse them weekly to, the
16 Burkee Committee and the Walz Committee, pursuant to the candidates' agreed
17 allocation formula.

18 The Commission notes that the Burkee Committee, the Walz Committee, or the
19 Joint Committee must establish a separate depository account to be used solely for the
20 receipt and disbursement of the joint fundraising proceeds. *See* 11 CFR 102.17(c)(3).

⁴ Commission regulations state that "[t]he participants in joint fundraising activity may include political party committees (whether or not they are political committees under 11 CFR 100.5), candidate committees, multicandidate committees, and unregistered organizations which do not qualify as collecting agents under 11 CFR 102.6(b)." 11 CFR 102.17(a)(2).

1 The Joint Committee must also provide joint fundraising disclaimers on every solicitation
2 for contributions,⁵ as well as screen⁶ and report⁷ all contributions received.

3 Thus, the Commission concludes that the joint fundraising effort proposed in the
4 request is permissible under the Act and Commission regulations, provided that the
5 Burkee Committee, the Walz Committee, and the Joint Committee also comply with the
6 additional requirements identified in this advisory opinion and Commission regulations.

7 *Question 2. How must the campaign committees allocate the expenses associated*
8 *with the joint campaign and fundraising activities?*

9 The campaign committees must allocate their expenses associated with the joint
10 campaign and fundraising activities in the manners described below.

11 *A. Joint Fundraising Expenses*

12 Mr. Burkee and Mr. Walz intend to solicit funds at some or all of the events
13 described in the request and to share the costs of such fundraising events equally. The
14 expenses associated with joint fundraising must be calculated as set forth in
15 11 CFR 102.17(c)(6) – (7). The joint fundraising representative must allocate gross
16 proceeds from a joint fundraising effort or event according to the formula set forth in the
17 joint fundraising agreement. 11 CFR 102.17(c)(6). After gross proceeds are allocated,

⁵ In addition to the disclaimer requirements under 11 CFR 110.11, a joint fundraising notice must be included with every solicitation for contributions. This notice must include: the names of all participating committees in the joint fundraising activity; the allocation formula to be used for distributing the joint fundraising proceeds; a statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and a statement informing contributors that the allocation formula may change if a contributor makes a contribution exceeding the amount limitation under the Act and Commission regulations. *See* 11 CFR 102.17(c)(2)(i)(A) – (D).

⁶ The fundraising representative and participating committees must screen all contributions received to insure that the funds comply with the limits and prohibitions of the Act. *See* 11 CFR 102.17(c)(4)(i).

⁷ *See* 11 CFR 102.17(c)(4).

1 the joint fundraising representative must "calculate each participant's share of expenses
2 based on the percentage of the total receipts each participant had been allocated."
3 11 CFR 102.17(c)(7)(i)(A). Contributions from prohibited sources may be excluded
4 from the gross proceeds when determining the ratio. *Id.* The joint fundraising
5 representative then subtracts each participant's share of expenses from each participant's
6 allocated gross proceeds, leaving net proceeds. *Id.* The expenses from a series of
7 fundraising events or activities must be allocated on a per-event basis. *See* 11 CFR
8 102.17(c)(7)(ii)(C). Thus, each candidate's share of the costs of fundraising events must
9 be attributed according to the percentage of the funds received by each participating
10 committee, as adjusted to reflect any prohibited contributions from prohibited sources.

11 *B. Joint Advertising Efforts*

12 Mr. Burkee and Mr. Walz also intend to participate in joint advertising efforts,
13 such as television, radio, and newspaper advertisements, bumper stickers, campaign
14 banners, and yard signs, some or all of which may solicit contributions to the joint
15 campaign. Expenses for joint advertising efforts that include solicitations must be
16 allocated to the Burkee Committee and the Walz Committee under the joint fundraising
17 agreement based on each candidate's allocation of receipts from the joint advertising
18 efforts, as discussed above.

19 For joint campaign events and advertising activities that do not include
20 solicitations, expenditures made on behalf of more than one clearly identified candidate
21 must be "attributed to each such candidate according to the benefit reasonably expected
22 to be derived." 11 CFR 106.1(a)(1). Specifically, for a publication or a broadcast
23 communication, the attribution is determined by "the proportion of space or time devoted

1 to each candidate as compared to the total space or time devoted to all candidates.” *Id.*
2 Accordingly, expenses for advertisements must be attributed to each campaign committee
3 according to the proportion of space or time devoted to that committee’s candidate, as
4 compared to the total space or time devoted to both candidates. If the campaign events
5 and communications described in the request devote equal time and space to the two
6 candidates, as is proposed, then Mr. Burkee and Mr. Walz must split the cost of the
7 advertisements equally.

8 *C. Joint Administrative Costs*

9 Mr. Burkee and Mr. Walz plan to divide administrative costs, such as website
10 development, purchase of domain names, hosting service, service space, and office
11 equipment. Such expenses must be attributed to each campaign based on the benefit
12 reasonably expected to be derived by each campaign. *See* 11 CFR 106.1(a).

13 *D. Joint Personnel Expenses*

14 Finally, Mr. Burkee and Mr. Walz propose to divide certain personnel expenses.
15 A single individual would serve as Campaign Director for both the Burkee Committee
16 and the Walz Committee. For all work done on behalf of the two political committees
17 jointly, he will be paid equally (50% of his salary) by each committee. Each presumptive
18 principal campaign committee would pay 100% of the portion of the Campaign
19 Director’s salary covering all work performed exclusively for that committee. Other paid
20 staff members working for both presumptive principal campaign committees would be
21 compensated under the same guidelines.

22 The Commission concludes that this proposal is permissible under the Act and
23 Commission regulations. To the extent that a staff member works on joint fundraising

1 events or activities, the proposed 50%/50% split of the staff member's salary by the two
 2 committees accurately reflects the proposed 50%/50% split of contributions received
 3 from the joint fundraising activities. *See* 11 CFR 102.17(c)(7)(i)(A). To the extent that a
 4 staff member does not work on joint fundraising activities, either by working exclusively
 5 for one of the presumptive principal campaign committees or by working on joint
 6 campaign activities that do not involve fundraising, the proposed allocation of expenses
 7 (100% or 50%/50%) accurately reflects the benefit reasonably expected to be derived by
 8 each committee. *See* 11 CFR 106.1(a).

9 *Question 3. May the Burkee Committee and the Walz Committee pay for the joint*
 10 *campaign and fundraising activities as described in the request?*

11 Yes, the campaign committees may pay for the joint campaign and fundraising
 12 activities as described in the request, subject to certain limitations discussed below.

13 *A. Method #1*

14 The first method proposed by the Burkee Committee and the Walz Committee to
 15 pay joint campaign and fundraising expenses would provide for either presumptive
 16 principal campaign committee to pay the entire expense of a joint campaign or
 17 fundraising event and then be reimbursed 50% of the total cost by the other presumptive
 18 principal campaign committee. The Act and Commission regulations limit the amount of
 19 support that a principal campaign committee of a Federal candidate may provide to other
 20 Federal candidates and still maintain its status as a principal campaign committee. *See*
 21 2 U.S.C. 432(e)(3)(A) and (B); *see also* 11 CFR 102.12(c)(1) and (2). The term
 22 "support" does not include contributions aggregating \$2,000 or less per election from one

1 authorized committee to another. 2 U.S.C. 432(e)(3)(B); 11 CFR 102.12(c)(2).

2 *1. Payment of Joint Fundraising Expenses*

3 The Commission's joint fundraising regulations provide that "[p]ayment of
4 expenses *may be* made from gross proceeds by the fundraising representative."

5 11 CFR 102.17(c)(7)(iii) (emphasis added). These regulations do not, however, require
6 that joint fundraising expenses be paid by the joint fundraising committee. Commission
7 regulations also contemplate that fundraising costs may be paid from funds advanced by
8 participants. *See* 11 CFR 102.17(b)(3). Thus, the Burkee Committee and the Walz
9 Committee may pay joint fundraising expenses themselves, subject to certain restrictions.
10 If a participating committee advances more than its proportionate share of fundraising
11 costs, which the payment by one participating committee of 100% of the expenses would
12 entail, the amount advanced which is in excess of the participant's proportionate share
13 may not exceed the amount that the participant may legally contribute to the remaining
14 participants. *See* 11 CFR 102.17(b)(3)(ii). In this case, that amount is \$2,000 because of
15 the limitation on the amount of support that a principal campaign committee of a Federal
16 candidate may provide to other Federal candidates and still maintain its status as a
17 principal campaign committee. *See* 2 U.S.C. 432(e)(3)(B); 11 CFR 102.12(c)(2). Thus,
18 while the Act and Commission regulations do not expressly prohibit one participating
19 committee from paying 100% of the expenses of a joint fundraising event, and seeking
20 reimbursement from the other participating committee, that committee may not advance
21 more than \$2,000 in the aggregate to the other participating committee.

22 *2. Payment of Joint Campaigning Expenses*

1 With respect to joint campaigning expenses, the Commission has previously
2 concluded that when one authorized committee pays the entire cost of a joint
3 communication that expressly advocates several candidates, and those candidates'
4 authorized committees then reimburse the paying authorized committee within a
5 commercially reasonable period of time after the advance is made, the authorized
6 committee's initial payment for the joint communication does not constitute "support" of
7 any of the other candidates. *See* Advisory Opinion 2004-37 (Waters); *see also* Advisory
8 Opinion 2004-01 (Bush/Kerr) (concluding that communications produced and distributed
9 by one candidate's authorized committee and coordinated with a second candidate's
10 authorized committee would not result in an in-kind contribution to the second authorized
11 committee so long as the second committee reimbursed the first committee for the
12 attributed portion of the coordinated communications). Thus, the Burkee Committee and
13 the Walz Committee may each pay the entire expense of a joint campaign event, as long
14 as the Committee is reimbursed its proportional share of the total cost by the other
15 presumptive principal campaign committee within a commercially reasonable period of
16 time after the advance is made.

17 *B. Method #2*

18 The request proposes a second method of payment, whereby either Mr. Burkee or
19 Mr. Walz, or one of their staffers, would pay for an expense using personal funds and
20 would subsequently be reimbursed by the Burkee Committee and the Walz Committee.
21 Under Commission regulations, expenses for joint fundraising activity may be paid for or
22 advanced by the participants in the joint fundraising effort or by the joint fundraising
23 representative. *See* 11 CFR 102.17(b), 102.17(c)(6)-(7), and 102.17(c)(7)(iii).

1 Individuals, such as Mr. Burkee, Mr. Walz, and their campaign staff, may not pay for a
2 joint fundraising expense using personal funds and subsequently be reimbursed by the
3 Burkee Committee and the Walz Committee. Mr. Burkee, Mr. Walz, and their campaign
4 staff may, however, advance money from their personal funds for joint campaign
5 expenses, as discussed below.

6 1. *Staff Advances*

7 When an individual uses personal funds to pay for a campaign expense pending
8 reimbursement from the campaign committee, that payment constitutes an in-kind
9 contribution from that individual to the committee to the extent it remains unreimbursed,
10 except for the payment of certain transportation and subsistence expenses. Therefore,
11 unreimbursed advances made by campaign staff are subject to the Act's amount
12 limitations. *See* 11 CFR 100.52(a) and 116.5.⁸

13 2. *Candidate Advances*

14 Candidates for Federal office (other than presidential candidates receiving public
15 funding) may make unlimited contributions to their own campaigns from their personal
16 funds. *See* 11 CFR 100.33 and 11 CFR 110.10. Although Mr. Burkee and Mr. Walz may
17 make unlimited contributions to their own campaigns, an advance made on behalf of the

⁸ Neither the Burkee Committee nor the Walz Committee should report a staffer's advance unless, at the end of the reporting period, the amount of previous contributions in the election cycle from that staffer to the Committee, plus the amount of that Committee's portion of the advance, minus the amount of the reimbursement by that Committee to the staffer, exceeds \$200. In that case, the Committee must report the advance as a memo entry contribution on Schedule A and report the reimbursement as an operating expenditure. If a Committee's reimbursements to the staffer exceed \$200 in the election cycle, the Committee must itemize the reimbursements on Schedule B, with a cross-reference to the memo entry on Schedule A for the advance. If the staffer's advance is not reimbursed, or is only partially reimbursed, within the same reporting period, the Committee must also report the amount of the advance outstanding at the end of the reporting period as a debt owed by the Committee on Schedule D if it exceeds \$500 or has been outstanding for more than 60 days of when it was incurred. *See* Advisory Opinions 1996-20 (Lucas) and 1992-01 (Faulkner).

1 other's campaign would normally be subject to the Act's amount limitations. However,
2 in paying for joint campaign expenses, if the candidate making the advance is reimbursed
3 by the other's committee within a commercially reasonable period of time after the
4 advance is made, the advance would not constitute an in-kind contribution to the other's
5 committee. *See* Advisory Opinion 2007-37 (Waters). Thus, Mr. Burkee and Mr. Walz
6 may make unlimited advances on behalf of the Burkee Committee and the Walz
7 Committee, so long as the candidate making the advance is reimbursed by the other's
8 committee within a commercially reasonable period of time.

9 Additionally, Mr. Burkee and Mr. Walz would be considered agents of their
10 principal campaign committees when they make these expenditures in connection with
11 their campaigns. *See* 2 U.S.C. 432(e)(2); 11 CFR 101.2; *see also* Advisory Opinions
12 1992-01 (Faulkner) and 1984-08 (Duncan). Thus, whenever Mr. Burkee and Mr. Walz
13 pay joint fundraising or other campaign expenses, they must provide their committees the
14 documentation required by the Act and Commission regulations. *See* 2 U.S.C. 432(c);
15 11 CFR 102.9(b)(1) and (2); *see also* Advisory Opinions 1992-01 (Faulkner) and 1984-
16 08 (Duncan).

17 C. *Method #3*

18 Finally, the request proposes a third method of payment, whereby a vendor that
19 provides goods or services would bill each campaign committee separately for 50% of
20 the total cost. Each committee's share of the costs of fundraising events must be
21 attributed according to the percentage of the funds received by that committee as adjusted
22 to reflect any prohibited contributions, as discussed above. For all other expenses, each
23 committee must pay its portion of the expenses "according to the benefit reasonably

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Robert D. Lenhard
Chairman